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SJC-12589

IN THE MATTER OF CARL MARTIN SWANSON.

December 12, 2019.

Attorney at Law, Admission to practice, Bar application.

Carl Martin Swanson has filed, in the county court, a petition to be admitted to the practice of law in Massachusetts together with some, but not all, of the supporting materials required by S.J.C. Rule 3:01, § 1.1, as appearing in 453 Mass. 1302 (2009). Notably absent from his materials are current certificates of admission and good standing from the highest courts of the other States in which he has been admitted. See Rule 3:01, § 1.1.7. His application is therefore incomplete. He was informed that, if he wished to proceed without the certificates of admission and good standing, he could request a waiver of the § 1.1.7 requirement from this court's rules committee, which he did. The committee denied that request in 2014, and it also subsequently denied his multiple requests for reconsideration.

Swanson thereafter appealed the rulings of the rules committee to a single justice of this court. The single justice concluded that Swanson was not entitled to relief. He also denied Swanson's motion for reconsideration. Swanson now appeals to the full court. Because we conclude that the interests of equity and justice do not require the granting of a waiver of S.J.C. Rule 3:01, § 1.1.7, in these circumstances, we affirm the single justice's order.

Background. Before applying for admission to the bar in Massachusetts, Swanson was admitted to the practice of law in

Michigan and Florida. He was disbarred in Michigan, however, in 2004, and was subsequently disbarred in Florida under Florida's reciprocal discipline rules. At no time has he sought reinstatement in either of those jurisdictions, although he alleges that the basis for his disbarment in Michigan has since been resolved, and, therefore, that he is eligible for admission in Massachusetts without first being readmitted in Michigan and Florida.

Discussion. This court has the authority to establish the rules and standards by which individuals become licensed to practice law in Massachusetts. One such rule, Rule 3:01, § 1.1.7, requires that applicants for admission to our bar must submit certificates from the highest courts of any other States in which they have been admitted to practice showing that they are in good standing in those jurisdictions.¹ The rule assists the Board of Bar Examiners (board) in assessing, as it must, "whether the candidate possesses the character and fitness to practice law" in Massachusetts. Rule V.1.1 of the Rules of the Board of Bar Examiners (2018). See S.J.C. Rule 3:01, § 1.4, as appearing in 478 Mass. 1301 (2018).² The rule has a clear, direct, rational connection to establishing the applicant's fitness to practice law. Matter of Tocci, 413 Mass. 542, 547-548 (1992) ("Such standards will be upheld under the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution so long as they have a rational connection with an applicant's fitness or capacity to practice law").

¹ Rule 3:01, § 1.1.7, of the Rules of the Supreme Judicial Court, as appearing in 453 Mass. 1302 (2009), requires that an applicant to the bar of Massachusetts submit, in addition to his or her petition for admission, "Current Certificate(s) of Admission and Good Standing from the highest judicial court in each state, district, territory, or foreign country to which the petitioner is admitted, if applicable." Although the rule refers to jurisdictions in which the applicant "is admitted," the spirit of the rule applies as well to jurisdictions in which an applicant was admitted but has since been disbarred.

² Rule 3:01, § 1.4, of the Rules of the Supreme Judicial Court, as appearing in 478 Mass. 1301 (2018), was renumbered effective March 1, 2018. Prior to that date, it was cited as S.J.C. Rule 3:01, § 1.3, as appearing in 453 Mass. 1302 (2009).

The court and its rules committee also have the inherent power to waive any one or more of the rules in particular situations when justice and equity require. See Mitchell v. Board of Bar Examiners, 452 Mass. 582, 586 (2008); Matter of Tocci, supra at 546; Novak v. Board of Bar Examiners, 397 Mass. 270, 274 (1986). The rules committee determined on the basis of the various materials submitted by Swanson that this is not a suitable case for a waiver. We agree.

We have carefully reviewed all the material that Swanson submitted to the rules committee, to the single justice, and to the full court. Based on what he has submitted, we are not persuaded that the event which led to his disbarment in Michigan has since been resolved, as he claims. There is nothing in the record from the Michigan authorities so indicating. Nor is there anything from Michigan or Florida indicating that he would be eligible to apply for reinstatement there or that he has applied for such reinstatement. In these circumstances, we cannot say that the purpose of our rule would be served by dispensing with certificates of admission and good standing from Michigan and Florida.

Swanson also claims that he was entitled to an evidentiary hearing before the rules committee and a written report from the committee setting forth its findings and reasons for not granting a waiver. For this proposition he relies primarily on cases that involve the administrative procedure act, G. L. c. 30A, and proceedings before administrative agencies. The act does not apply to the Judicial Branch, however. See G. L. c. 30A, § 1 (judicial department expressly excluded from definition of "agency"). See also Wei Jia v. Board of Bar Examiners, 427 Mass. 777, 788 (1998), citing Mead, petitioner, 372 Mass. 253, 255, cert. denied, 434 U.S. 858 (1977). The consideration of a request for a rule waiver by the rules committee is an ad hoc, equitable process that typically consists of reviewing the written request and any supporting material; it does not require a trial or specific findings.

To be clear, neither the rules committee, the single justice, nor this court has denied Swanson's application for admission to the bar. Because he has not filed certificates of admission and good standing in Michigan and Florida, his petition is incomplete. See S.J.C. Rule 3:01, § 1.1. It therefore has not been referred to the board for a report "as to the character, acquirements and qualifications of the

petitioner." S.J.C. Rule 3:01, § 1.4. The requirement that certificates of admission and good standing be provided as part of a complete application is consistent with our approach in the context of reciprocal discipline: "[p]ermitting an attorney suspended or disbarred in one State to practice law in the Commonwealth rightly tends to undermine public confidence in the effectiveness of attorney disciplinary procedures and threatens harm to the administration of justice and to innocent clients." Matter of Lebbos, 423 Mass. 753, 755 (1996), cert. denied, 520 U.S. 1275 (1997). When Swanson files certificates of admission and good standing in Florida and Michigan, and his application is otherwise complete, it will be referred to the board for its consideration.

The order of the single justice declining to grant relief from the rules committee's decision not to grant a rule waiver in these circumstances, on the record that was before it, is affirmed.

So ordered.

The case was submitted on briefs.
Carl Martin Swanson, pro se.